

FILED
08 MAR 27 PM 12:39
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

E-filing

Attorneys for Plaintiffs,
WARNER BROS. RECORDS INC.;
ARISTA RECORDS LLC; UMG
RECORDINGS, INC.; ZOMBA
RECORDING LLC; and BMG MUSIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION

JL

WARNER BROS. RECORDS INC., a Delaware
corporation; ARISTA RECORDS LLC, a
Delaware limited liability company; UMG
RECORDINGS, INC., a Delaware corporation;
ZOMBA RECORDING LLC, a Delaware
limited liability company; and BMG MUSIC, a
New York general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. _____

**EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY**

EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Case No. _____

#36335 v1

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 Plaintiffs, record companies who own the copyrights in the most popular sound recordings in
6 the United States, seek leave of the Court to serve limited, immediate discovery on a third party
7 Internet Service Provider ("ISP") to determine the true identity of Defendant, who is being sued for
8 direct copyright infringement.¹

9 As alleged in the complaint, Defendant, without authorization, used an online media
10 distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted works to
11 the public. Although Plaintiffs do not know the true name of Defendant, Plaintiffs have identified
12 Defendant by a unique Internet Protocol ("IP") address assigned to Defendant on the date and time
13 of Defendant's infringing activity.

14 Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that identify
15 Defendant's true name, current (and permanent) address and telephone number, e-mail address, and
16 Media Access Control ("MAC") address. Without this information, Plaintiffs cannot identify
17 Defendant or pursue their lawsuit to protect their copyrighted works from repeated infringement.

18 Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a Rule
19 26(f) conference where there are no known defendants with whom to confer.

20
21
22
23
24
25 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to
26 personally serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of
27 Court pursuant to Fed. R. Civ. P. 5(b)(2)(D) ("A paper is served under this rule by . . . leaving it with
28 the court clerk if the person has no known address.") and will serve Defendant's ISP with a copy of
this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the ISP to notify the
Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the
2 foregoing requested discovery immediately.

3
4 Dated: March 27, 2008

HOLME ROBERTS & OWEN LLP

5
6 By



MATTHEW FRANKLIN JAKSA

Attorney for Plaintiffs

7 WARNER BROS. RECORDS INC.; ARISTA
8 RECORDS LLC; UMG RECORDINGS, INC.;
9 ZOMBA RECORDING LLC; and BMG MUSIC